

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

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U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

**SAWELIJA TYREE FLOYD,
PETITIONER**

VS.

**UNITED STATES OF AMERICA,
RESPONDENT**

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CIVIL ACTION No: 3: 08 cv 133-MEF

**MEMORANDUM OF LAW IN SUPPORT
OF PETITIONER'S BRIEF AND RESPONSE**

**Sawelija Tyree Floyd, pro-se
A.I.S.# 190962/F3-24B
S. C. C.
P. O. Box # 56
Elmore, AL 36025-0056**

A) Strickland V. Washington, 80 L.Ed. 2d. 674, 466 U.S. 668.

A convicted defendant's claim that his counsel's assistance was so defective as to require reversal of a conviction or death sentence has, two components, each of which the defendant must show in order to set aside the conviction or death sentence: (1) That counsel's performance was deficient, which requires a showing that counsel was not functioning as the counsel guaranteed the defendant by the Sixth Amendment; and (2) that the deficient performance prejudiced the defense.

B) The proper standard for Attorney performance is that of reasonably effective assistance when a convicted defendant complains of the ineffectiveness of counsel assistance, the defendant must show that counsel's assistance, representation fell below the objective standard of reasonableness under prevailing professional norms.

C) Johnson V. U. S., 92 L.Ed. 436 (333 U. S.1017,

"The rights of the people to be secure in their person, houses, papers and effects, against unreasonable search, and seizures, shall not be violated, and no warrant shall issue, but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized."

1) Entry into defendant's living quarters, which was the beginning of the search, was demanded under color of office. "quoting" Amos V. U. S., 255 U. S. 313, 65 L. Ed. 654, 41 S. Ct. 266, "Taylor V. U. S., 76 L. Ed. 951, 52 S. Ct. 466, The U. S. Supreme Court has held as precedent that order alone does not authorize a search without warrant. "Mapp V. Ohio, 6 L. Ed. 2d. 1081, All evidence obtained by search and seizure in violation of the Fourth Amendment of the United States Constitution is by virtue of the due process clause of the Fourteenth Amendment guaranteeing the right to privacy free from unreasonable State intrusion, is admissible in a State Court."

2) The Rule which excludes unconstitutional evidence from being admitted in a State criminal trial is an essential part of both the Fourth and Fourteenth Amendments." quoting Weeks V. U. S., 58 L. Ed. 652 (1914) "stated that "The Fourth Amendment..... put the courts of the United States, and Federal Officials, in the exercise of their power and authority, under limitations and restraint (and) forever secure[d] the people, their persons, houses, papers and effects and seizures under the guise of law..

* Specifically dealing with the use of this evidence unconstitutionally seized, the court concluded; "If letters and private document can be use in evidence against a citizen accused of an offense, the protection of the 4th. Amendment declaring his right to be secure against such search and seizures is of no values, so far as those thus placed are concerned might as well be stricken from the constitution.

U. S. V. Leon, 82 L.Ed.2d. 672 (1984), Sufficient information must be presented to the magistrates to allow that official to determine probable cause, his actions cannot be a mere ratification of the bare conclusion of others.

CERTIFICATE OF SERVICE

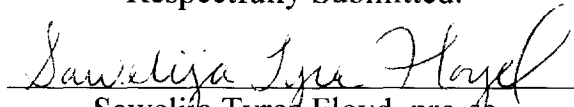
I hereby certify that a copy of the foregoing was served upon the following by placing a copy of the same in the United States Mail, postage prepaid on this the 29 day of April, 2008.

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Respectfully Submitted.


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